

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ricky M. Rodgers,)
Plaintiff,) Civil Action No.: 1:16-cv-00016-RMG
v.)
FNU Glenn, Ivan Negron, Albert Crosby,)
Jeffrey Eiben, D Garcia, FNU Hood, and)
United States of America,)
Defendants.)

)

ORDER

This matter comes before the Court on the Report & Recommendation (R & R) of the Magistrate Judge (Dkt. No. 31). For the reasons below, the Court declines to adopt the R & R as the order of the court.

On January 4, 2016, Plaintiff filed a *pro se* complaint against Defendants, alleging violations of his constitutional rights pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971). (Dkt. No. 1). Defendants filed a motion to dismiss, or in the alternative, for summary judgment on May 31, 2016. (Dkt. No. 25). The Magistrate Judge subsequently entered a *Roseboro* order directing the Plaintiff to file his response within by July 8, 2016. (Dkt. No. 26). Plaintiff failed to respond, and Plaintiff also failed to inform the Court whether he intended to pursue his claims by August 25, 2016, as called for by the Court's August 11, 2016 Order. (Dkt. No. 33). On August 26, 2016, the Magistrate Judge issued an R & R recommending that this court dismisses the petition with prejudice for failure to prosecute. (Dkt. No. 35). On September 6, 2016, Plaintiff filed objections to the Magistrate Judge's R & R. (Dkt. No. 37).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Plaintiff’s objections assert (1) that he mailed the Court a motion for an extension of time to respond Defendant’s motion for summary judgment on August 5, 2016, and (2) that he never received the Court’s August 11, 2016 Order to inform the Court if he wished to continue to pursue his claims. (Dkt. No. 37). Notwithstanding the fact that Plaintiff’s August 5 motion was mailed well past the initial deadline set in the *Roseboro* Order, it evinces an intent to pursue his claims. For good cause shown, the Court declines to adopt the R & R. Plaintiff is directed to file his response to Defendant’s motion for summary judgment by October 21, 2016. If Plaintiff files a response by this deadline, the Court will recommit the matter to the Magistrate Judge to address the merits of Defendant’s motion for summary judgment. (Dkt. No. 25). But if Plaintiff fails to respond by October 21, 2016, the Court will dismiss Plaintiff’s case with prejudice for failure to prosecute.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

September 15, 2016
Charleston, South Carolina